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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
The Development of Operational, )  
Technical and Spectrum Requirements )  
For Meeting Federal, State and Local )  
Public Safety Agency Communication )  
Requirements Through the Year 2010 )  
)  
Establishment of Rules and Requirements )  
For Priority Access Service )

WT Docket No. 96-86

COMMENTS OF  
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services (collectively, "SBMS") file these comments in response to the Second Notice of Proposed Rulemaking, released by the Federal Communications Commission ("Commission") in the above-captioned docket on October 24, 1997. These Comments focus on the Commission's examination of cellular priority access service ("CPAS"), which would give appropriate users priority access to cellular spectrum in order to respond to emergencies and disasters.

A. Permitting voluntary provision of CPAS is appropriate.

A threshold issue is whether the Commission should permit commercial mobile radio service ("CMRS") providers to provide CPAS on a voluntary basis, rather than mandate the provision of CPAS. (NPRM, para. 210) SBMS supports the voluntary provision of CPAS. Experience with the Oklahoma City bombing demonstrates the effectiveness of the flexible, voluntary provision of priority access to cellular spectrum. After the bombing, the first message that the public heard from city officials was "Stop using your cellular phones." Due to public cooperation, 97% of the calls of rescue and emergency personnel were completed on the first attempt during the three days following the

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explosion. Such a completion rate is particularly significant considering the number of phones supplied by the two licensed cellular carriers, free of charge, to rescue and emergency personnel at the site.

Voluntary provision of CPAS also is appropriate because, as the Commission recognized in its NPRM, some wireless systems are further along than others in their technical ability to provide priority access. (NPRM, paras. 215, 224) A Global System for Mobile Communications (“GSM”)<sup>1</sup> standard for Multi-level Precedence and Preemption service has been established. It is the GSM version of Priority Access Channel Assignment (“PACA”). Our switch manufacturer estimates that this feature will become available in the fourth quarter of 1999 time frame. Consequently, our PCS services in California and Nevada would be unable to comply with a mandatory requirement before that time frame.

In addition, CPAS supplements, rather than replaces, the allocation of spectrum for public safety purposes. As the Commission notes, the amount of spectrum available for dedicated public safety communications uses is being substantially increased. (NPRM, para. 194) This increase in dedicated spectrum obviates any need for formal, mandatory priority access service. CMRS carriers should be permitted to arrange customized solutions for priority access with the involved government entities, on a voluntary basis.

B. If CPAS is mandatory, the Commission must prescribe a cost recovery mechanism.

SBMS concurs with the Commission that whether CPAS is voluntary or mandatory affects whether the Commission must dictate a particular mechanism for cost recovery. (NPRM, para. 211) If the provision of CPAS is voluntary, the carrier can assure the recovery of costs through the exercise

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<sup>1</sup> GSM is one of the wireless technologies for 1900 Mhz Personal Communications Services (PCS) and is the technology used by Pacific Bell Mobile Services in California and Nevada.

of its business judgment. If CPAS is mandatory, however, the Commission must prescribe a mechanism to assure that the CMRS providers are able to recover the resultant costs. Further, CMRS providers must be assured that offering certain rates for subscription to CPAS will not result in a requirement to offer the same rates to other customers for purposes other than CPAS.

C. Any priority access rules must apply to all CMRS providers.

SBMS supports the Commission's conclusion that priority access rules should apply to all CMRS providers, including cellular and PCS providers. (NPRM, para. 224) The application of CPAS rules only to cellular carriers would be blatantly discriminatory and would place the cellular carriers at a distinct competitive disadvantage. While cellular carriers would be restricted by having to adhere to the Commission's CPAS rules, other CMRS providers would have the competitive advantage of being able to craft customized priority access solutions with state and local agencies. Further, the adoption of cellular-specific requirements would be contrary to steps already taken by the Commission to implement the Omnibus Budget Reconciliation Act of 1993, which requires regulatory symmetry among CMRS providers.<sup>2</sup>

D. Rules governing CPAS must contain explicit limitations on carrier liability.

Commission rules must explicitly limit the liability to which a CMRS provider may be exposed, should the carrier volunteer to provide CPAS. Without such limitation on liability, carriers may decline to provide CPAS, based on unacceptable exposure to risk. As noted by the Commission, Section 202 of the Communications Act prohibits carriers from engaging in unreasonable discrimination or preference in connection with the provision of communications services. (NPRM,

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<sup>2</sup> In the Matter of Implementation of Sections 3n and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN No. 93-252, Second Report and Order, paras. 1, 2 (March 7, 1994).

paras. 196-207) SBMS supports the Commission's proposal to adopt a rule stating that, in the event of a complaint that a CMRS provider engaged in unreasonable discrimination or preference, a sufficient defense will be that the carrier was providing priority access service, which enabled authorized priority users, in an emergency situation when spectrum used by the carrier was congested, to gain access to the next available channel on the carrier's service network. The burden would be on the complainant to disprove the carrier's showing. This limitation on liability would apply to all situations in which an entity or individual -- including individuals trying to call 911 or other emergency services -- was unable to complete a call because the carrier was providing CPAS.

Such an explicit limitation on carrier liability would be more effective than the Commission's alternative proposal of exercising its authority to forbear from applying any section of the Communications Act, including Section 202. (NPRM, paras. 203-207) As the Commission notes, Section 10(a) of the Communications Act sets forth three determinations that the Commission must make before deciding to forbear. (NPRM, para. 205) A rule that explicitly limits liability, upon a showing that the carrier was providing priority access service, would provide carriers greater assurance than the possibility that the Commission may decide to exercise its authority to forbear from applying Section 202.

#### E. The Commission should prescribe a structure for CPAS.

The Commission seeks comment on whether the Commission should require a formal prioritization structure or should allow a less formal, more flexible approach to evolve. (NPRM, para. 191) To achieve nationwide uniformity and consistency with regard to the provision of CPAS, the Commission should prescribe rules that govern the prioritization structure. The rules must spell out what authorities (e.g., National Guard, local police department, etc.) receive what level of priority. Further, the rules should specify that authorities that are eligible for CPAS must subscribe in advance

to the service and pay a monthly rate for inclusion in the subscriber profile. Then, when an emergency arises, CPAS subscribers can dial an established code to obtain the appropriate priority access. Requiring presubscription will help prevent fraudulent use of CPAS during an emergency. Additional standards, such as defining what types of emergencies qualify for implementation of CPAS, should be developed through an industry standards committee or by industry consensus.

#### CONCLUSION

The provision of CPAS should be on a flexible, voluntary basis. Any rules the Commission adopts concerning CPAS should apply to all CMRS providers, and must explicitly limit the liability of the CPAS provider.

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF SERVICE**

I, Jeanne A. Fischer, hereby certify that on this 22nd day of December, 1997, a copy of the foregoing was mailed or otherwise delivered to the parties listed below.

  
Jeanne A. Fischer

Dated: December 22, 1997

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